

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 20, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MELISSA R.,

Plaintiff,

v.

KILOLO KIJAKAZI,
ACTING COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

No. 2:21-CV-00305-JAG

ORDER GRANTING
DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 13, 15. Attorney Maren Miller Bam represents Melissa R. (Plaintiff); Special Assistant United States Attorney Joseph J. Langkamer represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge by operation of Local Magistrate Judge Rule (LMJR) 2(b)(2) as no party returned a Declination of Consent Form to the Clerk's Office by the established deadline. ECF No. 17. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

I. JURISDICTION

Plaintiff filed applications for Disability Insurance Benefits and Supplemental Security Income on December 2, 2019, alleging amended onset of

1 disability since March 1, 2019. Tr. 15, 97, 232-46. The applications were denied
2 initially and upon reconsideration. Tr. 132-39, 147-52. Administrative Law Judge
3 (ALJ) Jesse K. Shumway held a hearing on April 8, 2021, Tr. 38-65, and issued an
4 unfavorable decision on April 29, 2021. Tr. 12-37. Plaintiff requested review by
5 the Appeals Council, and on September 16, 2021, the Appeals Council denied the
6 request for review. Tr. 1-6. The ALJ's April 2021 decision became the final
7 decision of the Commissioner, which is appealable to the district court pursuant to
8 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on October 21,
9 2021. ECF No. 1.

10 **II. STATEMENT OF FACTS**

11 The facts of the case are set forth in detail in the transcript of proceedings
12 and the ALJ's decision and only briefly summarized here. Plaintiff was born in
13 1981 and was 36 years old on the alleged disability onset date. Tr. 31. She has a
14 GED and reports she completed some college courses. Tr. 71. Previous
15 employment includes work as a receptionist. Tr. 31, 299.

16 **III. STANDARD OF REVIEW**

17 The ALJ is responsible for determining credibility, resolving conflicts in
18 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
19 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
20 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
21 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
22 only if it is not supported by substantial evidence or if it is based on legal error.
23 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
24 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
25 1098. Put another way, substantial evidence is such relevant evidence as a
26 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
27 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one
28

1 rational interpretation, the Court may not substitute its judgment for that of the
 2 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d
 3 595, 599 (9th Cir. 1999). If substantial evidence supports the administrative
 4 findings, or if conflicting evidence supports a finding of either disability or non-
 5 disability, the ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d
 6 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision supported by
 7 substantial evidence will be set aside if the proper legal standards were not applied
 8 in weighing the evidence and making the decision. *Browner v. Sec'y of Health and*
 9 *Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

10 **IV. SEQUENTIAL EVALUATION PROCESS**

11 The Commissioner has established a five-step sequential evaluation process
 12 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),
 13 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through
 14 four, the claimant bears the burden of establishing a prima facie case of disability.
 15 *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant establishes
 16 that a physical or mental impairment prevents the claimant from engaging in past
 17 relevant work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot
 18 perform past relevant work, the ALJ proceeds to step five, and the burden shifts to
 19 the Commissioner to show (1) the claimant can make an adjustment to other work
 20 and (2) the claimant can perform other work that exists in significant numbers in
 21 the national economy. *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012). If a
 22 claimant cannot make an adjustment to other work in the national economy, the
 23 claimant will be found disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).
 24

25 **V. ADMINISTRATIVE FINDINGS**

26 On April 29, 2021, the ALJ issued a decision finding Plaintiff was not
 27 disabled, as defined in the Social Security Act. Tr. 12-37.
 28

1 At **step one**, the ALJ found Plaintiff meets the insured status requirements of
2 the Social Security Act through December 31, 2024, and that she did not engaged
3 in substantial gainful activity (SGA) since March 1, 2019. Tr. 17.

4 At **step two**, the ALJ determined Plaintiff had the following severe
5 impairments: major depressive disorder, anxiety disorder, somatic symptom
6 disorder, personality disorder, right shoulder impingement, degenerative disc
7 disease of the lumbar spine, and left eye blindness. Tr. 18.

8 At **step three**, the ALJ found Plaintiff did not have an impairment or
9 combination of impairments that met or medically equaled the severity of one of
10 the listed impairments. Tr. 18-19.

11 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found
12 she could perform light work, but with the following limitations:

13
14 [Plaintiff] can only occasionally climb ladders, ropes and scaffolds; she
15 can occasionally stoop, kneel, crouch, and crawl, and frequently climb
16 ramps and stairs; she can occasionally reach with the right upper
17 extremity; she cannot do work tasks requiring precise depth perception,
18 like threading a needle or using dangerous tools or machinery; she
19 cannot have concentrated exposure to extreme cold, humidity,
20 vibration, or pulmonary irritants; she can have no exposure to hazards,
21 such as unprotected heights and moving mechanical parts; she is limited
22 to simple, routine tasks and well-learned detailed tasks; she can have
23 no contact with the public; and she is limited to a routine, predictable
24 work environment with no more than occasional changes.

25 Tr. 22.

26 At **step four**, the ALJ found Plaintiff was unable to perform any past
27 relevant work. Tr. 31.

28 At **step five**, the ALJ found that, based on the testimony of the vocational
expert and considering Plaintiff's age, education, work experience and residual
functional capacity, there were jobs that existed in significant numbers in the

1 national economy that Plaintiff could perform, including the representative
2 occupations of router, office helper, and photocopying machine operator.
3 Tr. 31-32.

4 The ALJ thus concluded Plaintiff was not under a disability within the
5 meaning of the Social Security Act at any time from the alleged onset date through
6 the date of the decision. Tr. 33.

7 VI. ISSUES

8 Plaintiff seeks judicial review of the Commissioner's final decision denying
9 him disability insurance benefits under Title II and Title XVI of the Social Security
10 Act. The question presented is whether substantial evidence supports the ALJ's
11 decision denying benefits and, if so, whether that decision is based on proper legal
12 standards. Plaintiff raises the following issues for review: (1) whether the ALJ
13 properly evaluated the medical opinion evidence; and (2) whether the ALJ properly
14 evaluated Plaintiff's subjective complaints. ECF No. 13 at 1.

15 VII. DISCUSSION

16 A. Medical Opinions.

17 For claims filed on or after March 27, 2017, pursuant to the applicable
18 regulations, the ALJ does not give any specific evidentiary weight to medical
19 opinions or prior administrative medical findings. 20 C.F.R. §§ 404.1520c(a),
20 416.920c(a). Instead, the ALJ must consider and evaluate the persuasiveness of all
21 medical opinions or prior administrative medical findings from medical sources. 20
22 C.F.R. §§ 404.1520c(a) and (b), 416.920c(a) and (b). The factors for evaluating
23 the persuasiveness of medical opinions and prior administrative findings include
24 supportability, consistency, the source's relationship with the claimant, any
25 specialization of the source, and other factors (such as the source's familiarity with
26 other evidence in the file or an understanding of Social Security's disability
27 program). 20 C.F.R. §§ 404.1520c(c)(1)-(5), 416.920c(c)(1)-(5). Supportability
28

1 and consistency are the most important factors, and the ALJ must explain how both
2 factors were considered. 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2). The ALJ
3 may explain how the ALJ considered the other factors, but is not required to do so,
4 except in cases where two or more opinions are equally well-supported and
5 consistent with the record. *Id.* Supportability and consistency are explained in the
6 regulations:

7 (1) *Supportability*. The more relevant the objective medical evidence
8 and supporting explanations presented by a medical source are to
9 support his or her medical opinion(s) or prior administrative medical
10 finding(s), the more persuasive the medical opinions or prior
administrative medical finding(s) will be.

11 (2) *Consistency*. The more consistent a medical opinion(s) or prior
12 administrative medical finding(s) is with the evidence from other
13 medical sources and nonmedical sources in the claim, the more
14 persuasive the medical opinion(s) or prior administrative medical
finding(s) will be.

15
16 20 C.F.R. §§ 404.1520c(c)(1)-(2), 416.920c(c)(1)-(2).

17 The Ninth Circuit addressed the issue of whether the new regulatory
18 framework displaces the longstanding case law requiring an ALJ to provide
19 specific and legitimate reasons to reject an examining provider's opinion. *Woods*
20 *v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). The Court held that the new
21 regulations eliminate any hierarchy of medical opinions, and the specific and
22 legitimate standard no longer applies. *Id.* at 788-89, 792. The Court reasoned the
23 "relationship factors" remain relevant under the new regulations, and thus the ALJ
24 can still consider the length and purpose of the treatment relationship, the
25 frequency of examinations, the kinds and extent of examinations that the medical
26 source has performed or ordered from specialists, and whether the medical source
27 has examined the claimant or merely reviewed the claimant's records. *Id.* at 790,
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1 792. Even under the new regulations, an ALJ must provide an explanation
2 supported by substantial evidence when rejecting an examining or treating doctor's
3 opinion as unsupported or inconsistent. *Id.* at 792.

4 **1. Dr. Jackline.**

5 Plaintiff alleges the ALJ erred by not properly evaluating the opinion of
6 William H. Jackline, Ed.D. ECF No. 13 at 10-18. On April 6, 2018, Dr. Jackline
7 conducted a psychological evaluation and rendered an opinion on Plaintiff's level
8 of functioning. Tr. 367-76. Dr. Jackline diagnosed Plaintiff with somatic
9 symptom disorder, persistent, severe, with predominant pain; major depressive
10 episode, single episode, moderate; unspecified anxiety disorder; and unspecified
11 personality disorder. Tr. 373-74. Dr. Jackline opined that in a work setting
12 Plaintiff would show a "mildly to, at times, significantly impaired ability to
13 understand, to remember and to follow simple directions." Tr. 374. He explained
14 "[t]he latter would occur when [Plaintiff] experienced times of her reported severe
15 pain." *Id.* He opined she would also show a "moderately to, at times, significantly
16 impaired ability to understand, to remember and to follow increasingly lengthy,
17 fast-paced and complex verbal information and directions," which would occur
18 when Plaintiff "experienced times of her reported severe pain." *Id.* He further
19 opined she would show a "moderately to, at times, significantly impaired ability to
20 sustain her concentration and to persist at a task," noting again this would occur
21 "when [Plaintiff] experienced times of her reported severe pain." *Id.* He further
22 opined Plaintiff would show significantly impaired social interactive skills, and a
23 "moderately to, at times, significantly impaired ability to quickly, independently
24 and appropriately adapt to changes within her environment, and to appropriately
25 respond to daily stressors," which "again . . . would occur when [Plaintiff]
26 experienced times of her reported severe pain." *Id.* The ALJ found Dr. Jackline's
27 opinion unpersuasive. Tr. 28.
28

1 Plaintiff contends the RFC determination is the product of legal error
2 because the ALJ rejected the opinion from Dr. Jackline without setting forth
3 reasons supported by substantial evidence. ECF No. 13 at 10-18. Defendant
4 contends the ALJ reasonably found Dr. Jackline's opinion unpersuasive because it
5 lacked support and was inconsistent with the record. ECF No. 15 at 11-19.

6 The Court finds the ALJ did not err. The ALJ found Dr. Jackline's opinion
7 unpersuasive because Dr. Jackline "gave broad ranges of levels of impairment, and
8 tied supposed times of significant impairment entirely to speculative episodes of
9 exacerbation of pain rather than to exam findings"; and because Dr. Jackline's
10 opinion that Plaintiff had significant mental limitations was not supported by his
11 own objective findings upon evaluation. Tr. 28. Supportability is one of the most
12 important factors an ALJ must consider when determining the persuasiveness of a
13 medical opinion. 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2). The more
14 relevant objective evidence and supporting explanations that support a medical
15 opinion, the more persuasive the medical opinion becomes. 20 C.F.R. §§
16 404.1520c(c)(1), 416.920c(c)(1).

17 Here, the ALJ noted objective findings upon mental status exam included
18 intact comprehension, cognition, memory, concentration, insight, judgment, and
19 thought process, "aside from a bit of difficulty with social interaction as she
20 presented with a low energy level, a dysthymic mood, a mildly blunted affect, and
21 poor eye contact." Tr. 28. Although the ALJ does not provide citation to Dr.
22 Jackline's findings in the discussion of opinion evidence, elsewhere in the decision
23 the ALJ discusses Dr. Jackline's evaluation, including the objective findings upon
24 mental status exam. Tr. 25 (citing Tr. 367-76; *see* Tr. 370-71).¹ The ALJ noted
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27 ¹ While the ALJ cited to the exhibits in the decision, the Court cites here to the
28 corresponding pages in the Administrative Record.

1 Dr. Jackline's report that there were a "few times during the evaluation when she
2 showed mild, mirthful responses in the form of a brief smile," and that although
3 she maintained poor eye contact and was not verbally spontaneous, she was also
4 not irritable or belligerent, and she responded to all interview questions. Tr. 25.
5 The ALJ noted Plaintiff was able to recount events that had occurred in her life,
6 and she completed memory tasks, although Plaintiff reported she often had to write
7 things down when Dr. Jackline asked how she typically remembered and followed
8 multiple step verbal directions. *Id.* The ALJ noted Plaintiff was able to complete
9 spelling tasks forward and backward, and a "simple three-step command
10 successfully though slowly." *Id.* The ALJ noted Plaintiff's complaints at the
11 consultative exam "consisted mainly of her medical conditions and the pain she
12 experiences on a daily basis, which cause[d] her to be depressed," but the ALJ also
13 noted Dr. Jackline's report that she was "not currently involved with a
14 comprehensive pain management program." *Id.* The ALJ reasonably discounted
15 Dr. Jackline's opinion because the limitations were not supported by Dr. Jackline's
16 findings upon mental status exam.

17 The ALJ also found Dr. Jackline's opinion speculative. An ALJ may reject
18 a medical opinion if it is conclusory, inadequately supported, or not supported by
19 the record. *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir.
20 2009); *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002). Additionally,
21 "[t]he ALJ is the final arbiter with respect to resolving ambiguities in the medical
22 evidence." *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). Here, Dr.
23 Jackline opined that in a work setting Plaintiff would show "moderately to, at
24 times, significantly impaired" abilities. Tr. 374. Dr. Jackline's finding of periods
25 of limitations "at times" is not a concrete limitation, however, and Dr. Jackline also
26 explained his opinion was based on Plaintiff's reports of "experienced times of her
27 reported severe pain." *Id.* As discussed *supra*, the ALJ reasonably found Dr
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1 Jackline's opinion was not supported by his mental status exam findings. The
2 ALJ's conclusion Dr. Jackline's opinion was speculative because he gave broad
3 ranges of level of impairment and based his opinion of periods of impairment on
4 Plaintiff's reports rather than exam findings is supported by substantial evidence.
5 The ALJ was within his discretion to reject such statements from the provider.

6 The ALJ also concluded that along with objective findings, Plaintiff
7 activities of daily living "demonstrate[d] her ability to adapt to daily life and to
8 perform multi-step tasks on a daily basis" and "[did] not support the 'significant'
9 mental limitations provided by Dr. Jackline." Tr. 28 (citing Tr. 367-76). An ALJ
10 may discount a medical source opinion to the extent it conflicts with the claimant's
11 daily activities. *Morgan*, 169 F.3d at 601-02. Here, the ALJ noted during Dr.
12 Jackline's evaluation Plaintiff reported she was able to perform activities such as
13 taking care of her three children, cooking, cleaning, shopping, driving, and paying
14 bills. Tr. 25 (citing Tr. 367-76), Tr. 28. The ALJ also noted her report that she
15 completed personal grooming and hygiene tasks independently, and that she
16 reported she went on Facebook and drove herself to the consultative examination;
17 and Dr. Jackline noted she arrived 10 minutes early. Tr. 25 (citing Tr. 367-76).
18 The ALJ reasonably found Dr. Jackline's opinion was not supported by Plaintiff's
19 reports of her activities to Dr. Jackline at the evaluation.
20

21 Finally, the ALJ found Dr. Jackline's opinion was inconsistent with the
22 longitudinal record. Tr. 28. Consistency is one of the most important factors an
23 ALJ must consider when determining how persuasive a medical opinion is. 20
24 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2). The more consistent an opinion is
25 with the evidence from other sources, the more persuasive the opinion is. 20
26 C.F.R. §§ 404.1520c(c)(2), 416.920c(c)(2). Here, the ALJ explained that Dr.
27 Jackline's opinion was inconsistent with treatment notes showing Plaintiff's
28 reports of "75-100 [percent] pain relief with medications" and the fact that she

1 “required minimal treatment for the past year.” Tr. 28 (citing Tr. 406, 468-70,
2 478-80, 495-97, 504-06, 514-21, 524-26, 593, 607). Elsewhere in the decision, as
3 discussed *infra*, the ALJ also discussed Plaintiff’s reports of improvement with
4 conservative treatment along with records indicating her symptoms were generally
5 stable with treatment including medication. Tr. 26. The ALJ reasonably found Dr.
6 Jackline’s opinion was inconsistent with the longitudinal record.

7 Even if the medical opinion evidence could be interpreted more favorably to
8 Plaintiff, if it is susceptible to more than one rational interpretation, the ALJ’s
9 ultimate conclusion must be upheld. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th
10 Cir. 2005). The Court finds the ALJ’s discussion of Dr. Jackline’s opinion is
11 supported by substantial evidence and Plaintiff is not entitled to remand on this
12 issue.

13 **B. Subjective Complaints.**

14 Plaintiff contends the ALJ erred by not properly assessing Plaintiff’s
15 symptom complaints. ECF No. 13 at 18-21.

16 An ALJ engages in a two-step analysis to determine whether to discount a
17 claimant’s testimony regarding subjective symptoms. SSR 16–3p, 2016 WL
18 1119029, at *2. “First, the ALJ must determine whether there is objective medical
19 evidence of an underlying impairment which could reasonably be expected to
20 produce the pain or other symptoms alleged.” *Molina v. Astrue*, 674 F.3d 1104,
21 1112 (9th Cir. 2012) (quotation marks omitted). “The claimant is not required to
22 show that [the claimant’s] impairment could reasonably be expected to cause the
23 severity of the symptom [the claimant] has alleged; [the claimant] need only show
24 that it could reasonably have caused some degree of the symptom.” *Vasquez v.*
25 *Astrue*, 572 F.3d 586, 591 (9th Cir. 2009). Second, “[i]f the claimant meets the
26 first test and there is no evidence of malingering, the ALJ can only reject the
27 claimant’s testimony about the severity of the symptoms if [the ALJ] gives
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1 ‘specific, clear and convincing reasons’ for the rejection.” *Ghanim v. Colvin*, 763
2 F.3d 1154, 1163 (9th Cir. 2014) (citations omitted). General findings are
3 insufficient; rather, the ALJ must identify what symptom claims are being
4 discounted and what evidence undermines these claims. *Id.* (quoting *Lester v.*
5 *Chater*, 81 F.3d 821, 834 (9th Cir. 1995); *Thomas v. Barnhart*, 278 F.3d 947, 958
6 (9th Cir. 2002) (requiring the ALJ to sufficiently explain why it discounted
7 claimant’s symptom claims)). “The clear and convincing [evidence] standard is
8 the most demanding required in Social Security cases.” *Garrison v. Colvin*, 759
9 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278
10 F.3d 920, 924 (9th Cir. 2002)).

11 Factors to be considered in evaluating the intensity, persistence, and limiting
12 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,
13 duration, frequency, and intensity of pain or other symptoms; 3) factors that
14 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and
15 side effects of any medication an individual takes or has taken to alleviate pain or
16 other symptoms; 5) treatment, other than medication, an individual receives or has
17 received for relief of pain or other symptoms; 6) any measures other than treatment
18 an individual uses or has used to relieve pain or other symptoms; and 7) any other
19 factors concerning an individual’s functional limitations and restrictions due to
20 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R.
21 §§ 404.1529(c), 416.929(c). The ALJ is instructed to “consider all of the evidence
22 in an individual’s record,” to “determine how symptoms limit ability to perform
23 work-related activities.” SSR 16-3p, 2016 WL 1119029, at *2.

25 Here, the ALJ concluded Plaintiff’s medically determinable impairments
26 could reasonably be expected to cause some of the alleged symptoms; however,
27 Plaintiff’s statements concerning the intensity, persistence and limiting effects of
28 those symptoms were not entirely consistent with the medical evidence and other

1 evidence in the record. Tr. 23. Plaintiff argues the ALJ failed to properly consider
2 the nature and intensity of Plaintiff's limitations and failed to offer any reason for
3 rejecting Plaintiff's subjective complaints. ECF No. 13 at 18-21. Defendant
4 argues the ALJ reasonably discounted Plaintiff's subjective complaints because
5 they conflicted with her work history, medical records, and activities. ECF No. 15
6 at 3-11.

7 **1. Inconsistence with Objective Findings.**

8 The ALJ determined Plaintiff's allegations were inconsistent with objective
9 findings. Tr. 20, 23-26. An ALJ may not discredit a claimant's symptom
10 testimony and deny benefits solely because the degree of the symptoms alleged is
11 not supported by objective medical evidence. *Rollins v. Massanari*, 261 F.3d 853,
12 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991);
13 *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989); *Burch*, 400 F.3d at 680.
14 However, the objective medical evidence is a relevant factor, along with the
15 medical source's information about the claimant's pain or other symptoms, in
16 determining the severity of a claimant's symptoms and their disabling effects.
17 *Rollins*, 261 F.3d at 857; 20 C.F.R. §§ 404.1529(c)(2), 416.929(c)(2).

18 Here, the ALJ noted at a physical consultative examination in 2018 the
19 examiner noted left eye blindness since childhood, but that her corrected right eye
20 vision was 20/40; the ALJ noted upon exam she was observed able to get around
21 the room and handle objects such as coins, buttons, zippers, clothes and shoes
22 without difficulty. Tr 24; *see* Tr. 377-84. The ALJ noted aside from reduced
23 range of motion and painful bending in her lumbar spine, upon physical exam in
24 2018 she exhibited normal range of motion, muscle strength, sensation, and
25 reflexes of her bilateral upper and lower extremities; and although she alleged
26 multiple hypermobile and tender joints as well as difficulties with her shoulders
27 and elbows, such difficulties were not observed during the exam. Tr. 24; *see* Tr.

1 379-80. She had normal gait and stride, was able to sit and stand without
2 assistance, dress and undress, including removal of socks and shoes, and get on
3 and off the exam table. Tr. 24; *see* Tr. 381. The ALJ noted an x-ray of Plaintiff's
4 lumbar spine performed at the time of the 2018 exam showed normal alignment,
5 normal bone density, and normal intervertebral disc spaces; L5-S1 neuroforaminal
6 stenosis was noted but was mild. Tr. 24; *see* Tr. 382. The ALJ also noted an MRI
7 in August 2018 showed mild degenerative disc changes and mild to moderate facet
8 changes greatest in the lower lumbar spine without significant canal or foraminal
9 stenosis; and the MRI was suggestive of minimal edema associated with a small
10 central to right paracentral disc protrusion at L5-S1. Tr. 24 (citing Tr. 586).

11 The ALJ noted Plaintiff's reports that she injured her right shoulder in 2019;
12 she reported intervening in a fight involving her son. Tr. 24. The ALJ also noted
13 that objective exams generally showed stiff neck, cervical extension causing pain
14 corresponding to C3-5 bilaterally, lumbar extension causing pain at L3-5
15 bilaterally, reduced sensation in L4 and L5 bilaterally, tender points and muscle
16 aches, and right shoulder pain, with otherwise intact cranial nerves, respiratory
17 functioning, and ambulation without assistance. Tr. 24; *see e.g.*, Tr. 465-553. An
18 MRI of her right shoulder in February 2020 revealed mild impingement anatomy
19 with tendinosis and partial thickness bursal sided tear in the posterior fibers of the
20 distal supraspinatus tendon; and mild subacromial/subdeltoid bursitis. Tr. 24
21 (citing Tr. 396). AC bursa injection was recommended in March 2020 but was
22 delayed due to COVID-19 restrictions. Tr. 412-13; *see* Tr. 470.

24 The ALJ also noted findings from the psychological consultative exam with
25 Dr. Jackline in 2018. Tr. 25, 367-76. Dr. Jackline observed she was appropriately
26 attired with good grooming, she presented with a low energy level, dysthymic
27 mood, and mildly blunted affect, although she was observed to smile briefly a few
28 times during the exam; and Dr. Jackline also observed she maintained poor eye

1 contact. Tr. 25, 370-71. Dr. Jackline observed Plaintiff was not verbally
2 spontaneous, although he noted she replied to all interview questions and
3 attempted all tasks from the mental status examination, and she was able to
4 perform a simple, three-step command successfully though slowly. *Id.* The ALJ
5 noted examinations in the record showed that she was oftentimes depressed,
6 anxious, and/or tearful, but that on other occasions she demonstrated an
7 appropriate mood and affect, was generally cooperative, spoke in a fluent clear and
8 normal volume, had no perceptual or thought disturbances, and exhibited intact
9 cognition, memory, concentration, attention, insight and judgement; the ALJ noted
10 while at times she reported acute exacerbations in mental health symptoms in
11 response to increased pain or psychosocial stressors, medication adjustment was
12 discussed or prescribe at those times and she otherwise she reported stable
13 symptoms on medication. Tr. 26 (citing Tr. 408, 475, 480, 521, 526, 563, 566-67,
14 570, 607-09, 623-24, 629-30).

15 The ALJ's interpretation of the record is reasonable. It is the ALJ's
16 responsibility to resolve conflicts in the medical evidence. *Andrews*, 53 F.3d at
17 1039. Where the ALJ's interpretation of the record is reasonable as it is here, it
18 should not be second-guessed. *Rollins*, 261 F.3d at 857. The Court must also
19 consider the ALJ's decision in the context of "the entire record as a whole," and if
20 the "evidence is susceptible to more than one rational interpretation, the ALJ's
21 decision should be upheld." *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198
22 (9th Cir. 2008) (internal quotation marks omitted). On this record, the ALJ
23 reasonably concluded that the objective medical evidence is not consistent with
24 Plaintiff's complaints of disabling symptoms. This finding is supported by
25 substantial evidence and was a clear and convincing reason to discount Plaintiff's
26 symptom complaints.
27
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1 **2. Conservative Treatment/Improvement with Treatment.**

2 The ALJ found that Plaintiff's treatment did not support the level of
3 impairment she alleged and that she improved with treatment. Tr. 23. Evidence of
4 conservative treatment is sufficient to discount a claimant's testimony regarding
5 the severity of an impairment. *See Tommasetti*, 533 F.3d at 1039 (holding the ALJ
6 permissibly inferred that the claimant's "pain was not as all-disabling as he
7 reported in light of the fact that he did not seek an aggressive treatment program"
8 and "responded favorably to conservative treatment including physical therapy and
9 the use of anti-inflammatory medication, a transcutaneous electrical nerve
10 stimulation unit, and a lumbosacral corset"). Additionally, the effectiveness of
11 treatment is a relevant factor in determining the severity of a claimant's symptoms.
12 20 C.F.R. §§ 404.1529(c)(3), 416.913(c)(3); *see Warre v. Comm'r of Soc. Sec.*
13 *Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006); *Tommasetti*, 533 F.3d at 1040 (a
14 favorable response to treatment can undermine a claimant's complaints of
15 debilitating pain or other severe limitations).

16 Here, the ALJ noted Plaintiff reported that pain medicine, Tramadol, gave
17 her 75 to 100 percent pain relief, and Plaintiff also reported improvement during
18 the period at issue in her ability to perform household responsibilities and activities
19 of daily living. Tr. 24 (citing Tr. 478, 495-97, 504-06, 514-21, 524-26). The ALJ
20 noted Plaintiff was supposed to undergo an injection on her shoulder around March
21 2020, but that this was delayed due to COVID-19; the ALJ noted "still she
22 reaffirmed that Tramadol was highly effective at relieving her pain. Tr. 24 (citing
23 Tr. 406-08, 468-70). The ALJ also noted a letter from her physical therapist in
24 April 2020 indicated that physical therapy for her right shoulder and low back pain
25 in 2019 was helpful to Plaintiff until she unexpectedly stopped attending therapy.
26 Tr. 24-25 (citing Tr. 593). The physical therapist noted at the time of her last visit
27 in December 2019, she was able to walk into the clinic on her own and without the
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1 use of any assistive device, “she was responding very well to resistance training
2 exercises,” and that she reported “not having to use the electric carts at the store
3 anymore.” Tr. 593. The ALJ noted in February 2021, Plaintiff reported she was
4 engaging in physical therapy for her right shoulder and “making some progress.”
5 Tr. 25 (citing Tr. 607).

6 The ALJ reasonably concluded that Plaintiff’s treatment did not support the
7 level of impairment she alleged and that she improved with treatment. These
8 findings are supported by substantial evidence and are clear and convincing
9 reasons to discount Plaintiff’s symptoms claims.

10 **3. Activities.**

11 A Plaintiff’s daily activities may support an adverse credibility finding if the
12 activities contradict her other testimony. *Orn v. Astrue*, 495 F.3d 625, 639 (9th
13 Cir. 2007). If a Plaintiff can spend a substantial part of the day engaged in pursuits
14 involving the performance of exertional or non-exertional functions, the ALJ may
15 find these activities inconsistent with the reported disabling symptoms. *Fair*, 885
16 F.2d at 603; *Molina*, 674 F.3d at 1113. “While a claimant need not vegetate in a
17 dark room in order to be eligible for benefits, the ALJ may discount a claimant’s
18 symptom claims when the claimant reports participation in everyday activities
19 indicating capacities that are transferable to a work setting” or when activities
20 “contradict claims of a totally debilitating impairment.” *Molina*, 674 F.3d at
21 1112-13.

22 Here, the ALJ pointed to Plaintiff’s reports that she could maintain personal
23 care, do household chores such as dusting, washing dishes, folding laundry,
24 making meals, grocery shopping, driving, paying bills, watching television, going
25 outside daily, caring for her children, and going on walks and hikes. Tr. 21-22, 26
26 (citing Tr. 291-98, 372-73, 377, 617, 638). The ALJ also noted Plaintiff’s report in
27 June 2019 that she switched jobs, becoming a “Paparazzi jewelry consultant.” Tr.
28

1 22 (citing Tr. 566). The ALJ noted that in 2018 she reported she cooked for her
2 children, shopped in stores once a week for groceries, paid bills, drove, and was
3 able to perform personal grooming and hygiene independently; and she reported
4 she went on Facebook a few times a day. Tr. 25 (citing Tr. 367-76); *see* Tr.
5 372-73.

6 On this record, the ALJ reasonably concluded Plaintiff's activities were
7 inconsistent with her symptom claims. This finding, coupled with the additional
8 reasons offered by the ALJ, was a clear and convincing reason to give less weight
9 to Plaintiff's subjective complaints.

10 **4. Inconsistent Statements.**

11 The ALJ found Plaintiff's statements were not fully consistent with the
12 medical record. Tr. 26. An ALJ may consider inconsistent statements by a
13 claimant in assessing her subjective statements. *Tonapetyan v. Halter*, 242 F.3d
14 1144, 1148 (9th Cir. 2001). Here, the ALJ noted in June 2019 Plaintiff reported
15 she had recently switched jobs to become a jewelry consultant and records show
16 she reported she was pleased that her business was going well. Tr. 566. The ALJ
17 also noted in February 2021 Plaintiff reported she wanted to get a job but that
18 taking care of her family was her first priority. Tr. 26 (citing Tr. 607). While
19 Plaintiff reported using an electric cart at the store, the ALJ noted in April 2020
20 Plaintiff's former physical therapist indicated that while she was attending physical
21 therapy she "reported not having to use the electric carts at the grocery store
22 anymore"; the ALJ also noted there was no evidence she required an assistive
23 device. Tr. 25-26, 45, 593.

24 On this record, the ALJ reasonably concluded that some of Plaintiff's
25 statements were not fully consistent with the medical record. This finding, coupled
26 with the additional reasons offered by the ALJ, was a clear and convincing reason
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1 to give less weight to Plaintiff's subjective complaints. Plaintiff is not entitled to
2 remand on these grounds.

3 **VIII. CONCLUSION**

4 Having reviewed the record and the ALJ's findings, the Court finds the
5 ALJ's decision is supported by substantial evidence and free of legal error and is
6 affirmed. Therefore, **IT IS HEREBY ORDERED:**

7 1. Defendant's Motion for Summary Judgment, **ECF No. 15**, is
8 **GRANTED.**

9 2. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is **DENIED.**

10 3. The District Court Executive is directed to file this Order and provide
11 a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for
12 Defendant and the file shall be **CLOSED.**

13 **IT IS SO ORDERED.**

14 DATED March 20, 2023.




JAMES A. GOEKE
UNITED STATES MAGISTRATE JUDGE